

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

DENISE WARD, as Guardian/Conservator of
MICHAEL WARD, MICHAEL WARD,
Individually, and DENISE WARD, Individually,

Plaintiffs,

v.

GATEWAY INTERNATIONAL
MOTORSPORTS CORPORATION d/b/a
GATEWAY INTERNATIONAL RACEWAY,
GENUINE PARTS COMPANY and
JACQUELINE R. BREEDEN,

Defendants.

Case No. 09-cv-548-JPG

MEMORANDUM AND ORDER

This matter comes before the Court on defendant Genuine Parts Company's motion to withdraw its notice of removal (Doc. 7). The plaintiffs originally filed this suit in the Circuit Court for the Twentieth Judicial Circuit, St. Clair County, Illinois. Presumably that is their forum of choice. Genuine Parts Company removed the case on the basis of original diversity jurisdiction, but now seeks to withdraw the notice of removal and to have this case remanded to state court. This appears to be in line with the plaintiffs' forum preferences. It also appears that such remand would be justified by procedural defects in Genuine Parts Company's notice of removal: (1) the failure of all served defendants to join in writing in the notice of removal, *see McMahon v. Bunn-O-Matic Corp.*, 150 F.3d 651, 653 (7th Cir. 1998); *Roe v. O'Donohue*, 38 F.3d 298, 301 (7th Cir. 1994), *overruled in part on other grounds by Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344 (1999), and (2) the forum defendant rule, *see* 28 U.S.C. § 1441(b).

To expedite resolution of this issue, the Court **ORDERS** that on or before August 21,

2009, the plaintiffs shall file a consent to remand based on defects in the removal or a response in opposition to the motion to withdraw (Doc. 7). The Court will construe the plaintiffs' failure to timely file one of the foregoing documents as a consent to remand asserting the aforementioned procedural defects in the removal process.

IT IS SO ORDERED.

DATED: August 6, 2009

s/ J. Phil Gilbert
J. PHIL GILBERT
DISTRICT JUDGE